



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1995

Mr. David A. Anderson
Chief Legal Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR95-753

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29222.

The Texas Education Agency ("TEA") has received a request for transcriptions of references conveyed by telephone for applicants for the position of Coordinator of Internal Operation. You have submitted the requested information to us for review and claim that sections 552.101, 552.102, and 552.111 of the Government Code except it from required public disclosure

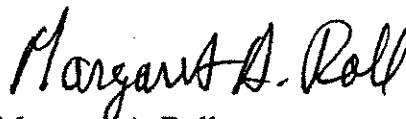
Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with the privacy interests of third parties. You also assert section 552.102, which excepts from disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information only if its release would cause an invasion of privacy under the test articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications of public employees. Open Records Decision No. 467 (1987) at 3.

Information previously held by this office not to be protected by common-law privacy interests includes, for example, applicants' and employees' educational training; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performance or ability; birth dates, height, weight, marital status, and social security numbers. See Open Records Decision No. 455 (1987) at 8-9. We have examined the information submitted to us for review. We conclude that it does not contain any information that is intimate or embarrassing. Accordingly, the submitted information may not be withheld from required public disclosure under sections 552.101 and 552.102 of the Government Code.¹

You also claim that section 552.111 of the Government Code excepts the evaluations from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This section protects only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue; it does not except from disclosure facts or written observations of facts. Open Records Decision No. 615 (1993) at 5. Furthermore, an agency's policymaking functions do not encompass internal administrative or personnel matters. *Id.* The requested information in this case relates to an internal administrative and personnel matter, that is the selection of an applicant for a certain employment position. In addition, much of the requested information is factual. Accordingly, we conclude that section 552.111 does not except the requested information from required public disclosure. The requested information must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

¹You claim that sections 552.101 and 552.102 except the requested information from disclosure because its release "would violate the expectation of privacy from the person(s) giving the reference information." We note, however, that information is not confidential under section 552.101 merely because the party submitting it anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987) at 1-2.

MAR/GCK/rho

Ref.: ID# 29222

Enclosures: Submitted documents

cc: Ms. Karen Messer
Senior Director, Budget Management
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494
(w/o enclosures)